

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on February 26, 2015

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre

COMMISSIONER EXCUSED:

Diane X. Burman

CASE 14-E-0151 - Petition of Hudson Valley Clean Energy, Inc.
for an Increase to the Net Metering Minimum
Limitation at Central Hudson Gas & Electric
Corporation.

CASE 14-E-0422 - Petition of Solar Energy Industries
Association, Alliance for Clean Energy New
York, the Vote Solar Initiative, the National
Resources Defense Council and The Alliance for
Solar Choice to Clarify the Process for
Utilities to Seek Relief from Net Metering
Caps.

ORDER STAYING PRIOR ORDER IN PART

(Issued and Effective February 27, 2015)

BY THE COMMISSION:

BACKGROUND

The Order Raising Net Metering Minimum Caps, Requiring
Tariff Revisions, Making Other Findings, and Establishing
Further Procedures (NEM Cap Order), issued December 15, 2014 in
these proceedings, resolved issues affecting net metering of
customer generation under the provisions of Public Service Law
(PSL) §66-j. The NEM Cap Order also addressed a rate design

currently in place for remote net metering that has resulted in an unanticipated opportunity for uneconomic arbitrage. Under existing utility rate designs, a non-residential customer pursuing remote net metering, at a site where a non-demand rate is in effect, obtains monetary credits for its exceedances of generation production over energy consumption at the remote site. Excess credits are then applied to bills at satellite sites, where volumetric rates are generally lower. If, however, such a non-demand customer were to locate generation eligible for net metering at a single on-site location, it could only obtain a volumetric credit there, which could be applied only to the bill at that site. In addition, demand customers, whether net metering remotely or on-site, can only obtain monetary credits at the volumetric rates accompanying their demand service classifications. Those volumetric rates are comparatively lower than the volumetric rates in effect under non-demand classifications.

As a result, monetization advantages remote net metering customers over on-site net metering customers, encouraging customers to arbitrage by pursuing projects at remote instead of on-site locations. To remedy this uneconomic preference, utilities were directed to modify their rate designs to provide for volumetric crediting instead of monetary crediting at remote net metered sites where non-demand rates are in effect.

As emphasized in the NEM Cap Order, however, the modification of the rate design must be implemented without disrupting the plans of net metering developers seeking to bring customer generation projects on-line in good faith. As a result, several categories of projects were grandfathered against the substitution of volumetric crediting for monetary crediting. These categories were further elucidated in an Order

Clarifying Prior Order issued in these proceedings on January 9, 2015. As clarified there, grandfathering extended to: existing net metered facilities; successful participants in New York State Energy and Research Development Authority (NYSERDA) solicitations and the Request for Proposals (RFP) process conducted by New York City (NYC) for development of renewable facilities at the Freshkills landfill; and, customers entering into binding interconnection agreements for remote net metering that have been queued by the major electric utilities that offer net metering as of December 11, 2014. The successful participants in the NYSERDA and NYC programs were defined as those projects that have been awarded grants from NYSERDA through the Program Opportunity Notices (PON) described in the NEM Cap Order,¹ and from NYC through its Freshkills process, subject to compliance with the terms and conditions of those grants. Emplacement within a utility queue as of December 11, 2014 was established by demonstrating that a completed preliminary interconnection application had been submitted to the relevant utility as of that date.

It was also decided in the NEM Cap Order that, for a net metered project to comply with the 2 MW size limitation that is a prerequisite to remote net metering under PSL §66-j(3)(e)-(g), each project, up to the 2 MW limit, must be separately metered and interconnected to the utility grid, each must be located on a separate site, and each must operate independently of others. To avoid disrupting the development of meritorious net metering projects, however, successful participants in the NYSERDA solicitations and the NYC Freshkills RFP process

¹ The competitive solicitation PONs were more completely described in the Erratum Notice issued December 16, 2014 in these proceedings.

discussed above need not meet all three criteria and instead may comply by showing they made a good faith effort to satisfy the 2 MW limit in designing their projects.

RESPONSES TO THE NEM CAP ORDER

Following issuance of the NEM CAP Order, six timely petitions for rehearing were received within the 30-day period prescribed under PSL §22 and 16 NYCRR §3.7. Moreover, additional notice was provided through publication in the State Register pursuant to the State Administrative Procedure Act (SAPA). By the end of the SAPA §202(1)(a) period for submitting comments in response to the notice, on February 17, 2015, 27 comments had been received.

The NEM CAP Order directed utilities to make tariff filings implementing the change from monetary crediting to volumetric crediting by December 22, 2014, to become effective on January 2, 2015. The time for making the filing, however, was thereafter extended twice, first to February 20, 2015 (to become effective March 24, 2015), and then to April 3, 2015 (to become effective May 4, 2015).² Consequently, the tariffs providing for monetary crediting remain in effect.

Many of the Petitioners for Rehearing request that tariff filings implementing the substitution of volumetric for monetary crediting be stayed and that additional comments on the proposed change in methodology be solicited. These Petitioners also propose various expansions of the criteria for obtaining grandfathering against application of the new methodology for various types of projects. The Petitioners justify their

² Case 14-E-0422, supra, Notice Extending Time to File (issued December 19, 2014) and Notice Extending Time to File (issued February 19, 2015).

positions on the grounds that notice of the change in methodology was not adequate and that, even with the grandfathering provided for in the NEM CAP Order, the development of many net metered projects would be disrupted, posing an obstacle to achieving New York's goal for promoting solar energy in particular.

The comments reiterate many of the concerns raised in the petitions for rehearing. While some commentators conceded that the monetary crediting methodology yielded uneconomic results, a few argued to the contrary and asked that the methodology be retained. Others maintained that moving from a monetary crediting to a volumetric crediting methodology appropriately eliminated uneconomic disparities between customer-sited and remote-sited net metered generation facilities. Many commentators proposed expansion of the criteria for grandfathering, including reliance on letters of intent, other types of contractual obligations, and issuance of RFPs by municipalities and businesses as the basis for awarding grandfathering.

Several commentators maintained that, if the value obtained through monetary crediting is lost, it must be compensated for through equivalent value obtained from other sources, if solar projects are to remain viable. Another issue raised was coordination between the elimination of the monetary crediting methodology and the implementation of the soon to be launched 2015 MW Block Program, developed pursuant to the NY-Sun initiative,³ for solar projects sized in excess of 200 kW. Another claim was that pursuing net metering under demand

³ Case 03-E-0188, Retail Portfolio Standard, Order Authorizing Funding and Implementation of the Solar Photovoltaic MW block programs (issued April 24, 2014) (NY-Sun Order).

metered classifications generally is difficult, because of the low volumetric rates under the rate designs widely accepted for the major electric utilities, and remote net metering was a viable alternative under which demand metered customers could successfully install solar projects.

DISCUSSION AND CONCLUSION

Many of the petitioners and commentators argue that the NEM Cap Order process for moving away from monetary crediting at non-demand remote net metered sites is disrupting the development of meritorious solar projects needed to achieve New York's solar energy goals.⁴ Some maintain that their solar development businesses cannot progress if the crediting methodology is altered as contemplated in the NEM CAP Order. Others pose potential difficulties in coordinating the change in methodology with the NY-Sun goals. The proposals for remedying the perceived effects of the change in methodology, however, vary widely and sometimes conflict.

A more orderly process for transitioning away from monetary crediting is necessary. To properly manage the transition, requests for a stay will be granted, in the form discussed below.

First, Petitioners request a stay of the effective date of the tariffs, required in the NEM CAP Order, implementing the change in methodology from monetary crediting to volumetric crediting. While the date for the filing of those tariffs has already been extended to April 3, 2015, to become effective on May 4, 2015, establishing any filing date for those tariffs at

⁴ The provisions of the NEM CAP Order for implementing the 2 MW size limitation provided for in PSL §66-j seem to have engendered little controversy; consequently, those provisions need not be disturbed and remain in effect.

this time creates an artificial deadline that could obstruct the development of an orderly process for making the transition away from monetary crediting. As a result, the filing of the tariffs is stayed until such future time as a date is arrived at in conformance with a transition plan that avoids disruption of net metered generation project development.

Second, the approach to grandfathering projects against implementation of the volumetric methodology is premised upon criteria that reference a December 11, 2014 deadline. Use of that date could also pose an arbitrary barrier to transitioning away from monetary crediting. As a result, use of that date is stayed while methods for accomplishing the transition, including the selection of an appropriate deadline date to the extent necessary, are considered.

The transition raises several issues. Developing criteria for grandfathering could involve delving into the factual circumstances attending detailed and complex, but not necessarily well-documented, arrangements. Moreover, the transition away from monetary crediting must be coordinated with the principles announced at this Session in the Reforming Energy Vision (REV) proceeding. Among those principles are tariff designs that recognize the value of distributed generation. Another feature of the transition is coordination of the relationship between monetary crediting and the MW Block Program for promoting solar project development provided for in the NY-Sun Order.

Nonetheless, monetary crediting enables uneconomic arbitrage and so cannot continue indefinitely. Staying the provisions of the NEM CAP Order discussed above is an interim measure necessary to afford sufficient time to better manage the transition in methodology. As a result, the Commission expects to arrive at a transition plan promptly. Department of Public

CASE 14-E-0151, et al.

Service Staff is directed to prepare a plan meeting the objectives discussed above for the Commission's consideration within 30 days of the date of this Order.

The Commission orders:

1. The Order Raising Net Metering Minimum Caps, Requiring Tariff Revisions, Making Other Findings, and Establishing Further Procedures issued December 15, 2014 in these proceedings is stayed in part to the extent discussed in the body of this Order.

2. These proceedings are continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary